

FCC MAIL SECTION

Before the
 Federal Communications Commission
 Washington, D.C. 20553

DISPATCHED BY
 Docket No. 93-275

In the Matter of

Amendment of Section 73.202(b), RM-8134
 Table of Allotments,
 FM Broadcast Stations.
 (Wickenburg, Arizona)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 8, 1993; Released: March 31, 1993

Comment Date: May 21, 1993

Reply Comment Date: June 7, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed on behalf of Circle S Broadcasting Co. ("petitioner"), permittee of Station KFMA(FM), Channel 229A, Wickenburg, Arizona, seeking the substitution of Channel 231C3 for Channel 229A and modification of its authorization to specify operation on the higher powered channel. Petitioner stated its intention to apply for Channel 231C3 if it is allotted to Wickenburg, Arizona, as requested.

2. Channel 231C3 can be substituted for Channel 229A at the petitioner's suggested site, located 18.6 kilometers (11.6 miles) southwest of the community,¹ consistent with the minimum distance separation requirements of the Commission's Rules.² Additionally, since Wickenburg is located within 320 kilometers (199 miles) of the Mexican border, the Commission must seek concurrence of the Mexican government in this proposal.³

3. Although the Wickenburg proposal complies with Section 73.207(b)(1) and (e) of the Commission's Rules, we question whether, at petitioner's specified site, the requirements of Section 73.315 could be met. While petitioner states that its proposal would comply with the Commission's Rules by using maximum Class C3 facilities (25 kW effective radiated power and an antenna HAAT of 100 meters) at its specified site, or its equivalent from a higher elevation, we question whether the proposal would provide a 70 dBu signal over the entire community, as required by Section 73.315(a). A terrain profile graph reveals that a terrain obstruction of approximately 870 meters (2,854 feet) above mean sea level ("AMSL") lies approximately 8.0

kilometers (5.0 miles) northeast of the specified site. The average terrain elevation at the petitioner's requested site is 723.8 meters AMSL. Assuming operation at maximum conventional Class C3 facilities, the antenna radiation center at the petitioner's requested site would be 823.8 meters AMSL. The ground level at the referenced site is 787.4 meters (2,582.7 feet) AMSL. Therefore, a hypothetical antenna with a radiation center 100 meters above average terrain at the petitioner's referenced site would not provide a 70 dBu signal over the entire community of Wickenburg. Rather, in order to provide the entire community with a 70 dBu signal which clears all major obstructions, petitioner would be required to employ a tower of at least 256.4 meters (841.0 feet) above ground level at its referenced site.

4. Based on our analysis of petitioner's proposal as presented, we have determined that a 70 dBu signal would not encompass Wickenburg from the specified site. Petitioner's supporting engineering exhibit submitted with its petition did not include specific showings to demonstrate its ability to provide a 3.16 mV/m contour over the entire principal community of Wickenburg. The Commission generally will not make an allotment absent a showing that a site is available which will clear any major intervening obstructions and provide the community with a minimum signal of 70 dBu. See, e.g., *Pinckneyville, Illinois*, 41 RR 2d 69, 71 (1977). Therefore, petitioner is requested to provide additional information in its comments to demonstrate its ability to comply with the requirements of Section 73.315 of the Commission's Rules. If the petitioner desires to pursue its specified site, it should also include evidence of FAA clearance for a tower of 256.4 meters (841.0 feet) to accommodate its proposal at that location. In the event the requested information is not provided the proposal may be denied.

5. We believe the public interest would be served by proposing the substitution of Channel 231C3 for Channel 229A at Wickenburg, Arizona, since it could provide the community with an expanded coverage area FM service. Therefore, we shall propose to modify the petitioner's authorization for Station KFMA(FM) (File No. BPH-911218MA) to specify operation on Channel 231C3 in lieu of Channel 229A. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 231C3 at Wickenburg, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

6. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Wickenburg, Arizona, as follows:

City	Channel No.	
	Present	Proposed
Wickenburg, Arizona	229A, 287C1	231C3, 287C1

¹ Coordinates used for Channel 231C3 at Wickenburg are 33-51-31 and 112-53-04.

² The site restriction is required to avoid a short-spacing to the authorized sites of Station KMGN(FM), Channel 230C, Flagstaff, Arizona, at coordinates 34-58-08 and 111-30-28, and to Station KOOL-FM, Channel 233C, Phoenix, Arizona, at coordinates

33-20-02 and 112-03-42.

³ Consideration of this proposal, and termination of this proceeding, is conditioned upon the adoption of a working arrangement between the United States and Mexican governments to implement the 1992 U.S./Mexico FM Broadcast Agreement.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **May 21, 1993**, and reply comments on or before **June 7, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

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9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.